

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-215201

DATE: September 25, 1984

MATTER OF: Program Resources, Inc.

DIGEST:

1. Protest of agency's cancellation of request for proposals (RFP) issued as part of an Office of Management and Budget Circular A-76 cost comparison is denied where agency determines that RFP does not accurately reflect its minimum needs and where reasonable basis exists for agency belief that resolicitation with revised specifications will enhance competition.
2. Claim for bid preparation costs is denied where claimant has not shown that agency abused its discretion in canceling the solicitation.

Program Resources, Inc. (PRI), protests the cancellation of request for proposals (RFP) No. N62474-83-R-5664 issued by the Department of the Navy (Navy) for Base Operating Services for the Naval Air Facility at El Centro, California. The solicitation indicated that proposals were being solicited as part of an Office of Management and Budget Circular A-76/(A-76) cost comparison.

PRI, the only firm which submitted a proposal, contends that the Navy's cancellation of the RFP were arbitrary and requests that we award it bid preparation costs. We deny the protest and the claim.

The Navy indicates that the solicitation was canceled due to various specification deficiencies which would have resulted in unnecessary contingencies being reflected in the contract price. The Navy states that the RFP requirement that the contractor improve the existing water quality to meet state standards overstated its minimum needs since the water already met state standards. Also, the RFP provision which charged the contractor with replacement cost for any aircraft damaged by foreign objects was found to place unacceptable risks on potential contractors. In addition, the Navy determined that the RFP provision which charged the contractor with financial liability for bombing

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runs which were aborted due to the contractor's failure to remove stranded vehicles from the target areas was excessive. Finally, the Navy indicates that the RFP requirement that the contractor replace government class II vehicles that become worn out during contract performance with new class II vehicles overstated the government's needs. The Navy indicates that these deficiencies discouraged potential offerors from submitting proposals and that improvements in these areas would increase competition. As a result, the Navy contends that there was a reasonable basis for the cancellation.

PRI contends that the alleged deficiencies justifying cancellation were recognized only after the Navy had received PRI's proposal. PRI indicates that it recognized the potential liabilities but nevertheless was willing to assume the risks and provide all the needs of the government at a price that permitted cost savings over current operations. PRI argues that because this is an A-76 situation, where the Navy is, in effect, a competitor, our Office should closely scrutinize the Navy's decision to cancel the RFP. PRI contends that the Navy must show more than a reasonable basis in order to justify cancellation and that the Navy has not made such a showing in this case.

Generally, we do not review an agency's decision to perform work in-house rather than to contract for the services in question because we regard the decision as a matter of policy within the province of the executive branch. Midland Maintenance Inc., B-202977.2, Feb. 22, 1982, 82-1 C.P.D. ¶ 150. We review such cases only when a competitive solicitation has been issued for the purpose of ascertaining the cost of contracting out and it is alleged that the cost comparison between performing the work in-house and contracting out is faulty or misleading. West Coast Fire Service, Inc., B-211484, Dec. 13, 1983, 83-2 C.P.D. ¶ 673. However, we have held that the challenge to the cancellation of a solicitation issued for A-76 cost comparison purposes is appropriate for our review since the competitive procurement system is involved. D-K Associates, Inc., 62 Comp. Gen. 129 (1983), 83-1 C.P.D. ¶ 55. In such circumstances, we have applied the general rules regarding cancellation in evaluating the propriety of the contracting officer's decision. Id.

With respect to the cancellation of a negotiated procurement, the contracting officer is clothed with broad powers in deciding whether to cancel the solicitation.

Baucom Janitorial Services, Inc., B-210216, May 31, 1983, 83-1 C.P.D. ¶ 584. In making this determination, the contracting officer need only establish a reasonable basis for the cancellation. Allied Repair Service, Inc., B-207629, Dec. 16, 1982, 82-2 C.P.D. ¶ 541; 58 Comp. Gen. 451 (1979). Moreover, we have recognized that the agency's decision to cancel is closely linked to its discretionary authority to determine its minimum needs and the best method of accommodating its needs. Baucom Janitorial Service, Inc., B-210216, supra. The protester carries the burden of showing that the agency's decision was unreasonable.

Based on the record, we cannot find that the Navy's decision in canceling the RFP lacked a reasonable basis. The Navy determined that the RFP did not reflect its minimum needs and that various specification deficiencies discouraged potential offerors from submitting proposals. This is evidenced by several "no bid" letters received from other firms which stated many of the above reasons for not submitting a proposal. The Navy may reasonably anticipate additional competition by removing certain requirements from the RFP and we have recognized that a contracting officer may cancel an RFP if he believes that a resolicitation with revised specifications will enhance competition. Management Services Incorporated, B-197443, June 6, 1980, 80-1 C.P.D. ¶ 394. In addition, where an agency reasonably believes that its needs are not accurately reflected by the RFP, cancellation is also appropriate. Gill Marketing Co., Inc., B-194414.3, Mar. 24, 1980, 80-1 C.P.D. ¶ 213. While PRI complains that the Navy should have acted earlier and that the reasons advanced for cancellation are merely after-the-fact explanations, our approach is to look to whether the agency's action has any basis supporting it, not to simply examine the basis the agency advanced at the time it took the action. 48 Comp. Gen. at 466; See also Chrysler Corporation, B-206943, Sept. 24, 1982, 82-1 C.P.D. ¶ 271.

In conclusion, we find that the Navy's cancellation of the solicitation was proper. Accordingly, we cannot find that PRI has been subjected to arbitrary and capricious treatment, a showing of which is a prerequisite to entitlement of bid preparation costs and, therefore, PRI is not entitled to recover such costs. See D-K Associates, Inc., B-206196, supra.

The protest and claim are denied.

for *Milton J. Fowler*
Comptroller General
of the United States